

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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Board of Vocational Nursing
and Psychiatric Technicians

9 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2009-159

13 **DOROTHY B. STRABA**
14 **445 East Sunrise Drive**
Vista, CA 92084

A C C U S A T I O N

15 **Vocational Nurse License No. VN 233369**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in
21 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric
22 Technicians, Department of Consumer Affairs.

23 2. On or about April 4, 2008, the Board of Vocational Nursing and Psychiatric
24 Technicians issued Vocational Nurse License Number VN 233369 to Dorothy B. Straba
25 (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to
26 the charges brought herein and will expire on December 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2875 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the

1 licensee in question, the record of conviction of the crime shall be conclusive
2 evidence of the fact that the conviction occurred, but only of that fact, and the board
3 may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

4 As used in this section, 'license' includes "certificate," "permit," "authority,"
5 and "registration."

6 9. Section 2878 of the Code states:

7 The Board may suspend or revoke a license issued under this chapter [the
8 Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the
following:

9 (a) Unprofessional conduct, which includes, but is not limited to, the
10 following:

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12 (f) Conviction of a crime substantially related to the qualifications, functions,
and duties of a licensed vocational nurse, in which event the record of the conviction
13 shall be conclusive evidence of the conviction.

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15 10. Section 2878.5 of the Code states:

16 In addition to other acts constituting unprofessional conduct within the meaning
17 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for
a person licensed under this chapter to do any of the following:

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19 (b) Use any controlled substance as defined in Division 10 of the Health and
20 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic
beverages, to an extent or in a manner dangerous or injurious to himself or herself,
21 any other person, or the public, or to the extent that the use impairs his or her ability
to conduct with safety to the public the practice authorized by his or her license.

22 (c) Be convicted of a criminal offense involving possession of any narcotic or
23 dangerous drug, or the prescription, consumption, or self-administration of any of the
substances described in subdivisions (a) and (b) of this section, in which event the
24 record of the conviction is conclusive evidence thereof.

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REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 2521, states:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

(b) A conviction of practicing medicine without a license in violation of Chapter 5 of Division 2 of the Business and Professions Code.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the Business and Professions Code.

(d) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and Professions Code.

(e) Conviction of a crime involving fiscal dishonesty.

(f) Any crime or act involving the sale, gift, administration, or furnishing of "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business and Professions Code.

12. California Code of Regulations, title 16, section 2522, states:

When considering a) the denial of a license under Section 480 of the Business and Professions Code, b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime, or c) a petition for reinstatement of a license under Section 2787.7 of the Business and Professions Code, the Board in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

(2) Actual or potential harm to the public.

(3) Actual or potential harm to any patient.

(4) Overall disciplinary record.

(5) Overall criminal actions taken by any federal, state or local agency or court.

(6) Prior warnings on record or prior remediation.

- 1 (7) Number and/or variety of current violations.
- 2 (8) Mitigation evidence.
- 3 (9) In case of a criminal conviction, compliance with terms of sentence and/or
4 court-ordered probation.
- 5 (10) Time passed since the act(s) or offense(s) occurred.
- 6 (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to
7 Penal Code section 1203.4.
- 8 (12) Cooperation with the Board and other law enforcement or regulatory
9 agencies.
- 10 (13) Other rehabilitation evidence.

11 COSTS

12 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licensee found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case.

16 FIRST CAUSE FOR DISCIPLINE

17 **(November 20, 2009 Criminal Conviction for “Wet” Reckless on July 18, 2009)**

18 14. Respondent has subjected her vocational nurse license to disciplinary action under
19 sections 490 and 2878, subdivision (f) of the Code in that Respondent was convicted of a crime
20 that is substantially related to the qualifications, functions, and duties of a licensed vocational
21 nurse. The circumstances are as follows:

22 a. On or about November 20, 2009, in a criminal proceeding entitled *People*
23 *of the State of California vs. Dorothy B. Straba*, in San Diego County Superior Court (North
24 County Division), case number CN264890, Respondent was convicted on her plea of guilty to
25 violating Vehicle Code section 23103, subdivision (a), reckless driving, within the meaning of
26 Vehicle Code section 23103.5 (acceptance of guilty plea to violation of § 23103 in place of
charge for violation of § 23152 [driving under the influence of alcohol]), a misdemeanor.

27 b. As a result of the conviction, on or about November 20, 2009, Respondent
28 was sentenced to three years summary probation, and ordered to complete a First Conviction

1 Program, pay fines and fees in the amount of \$1,000, and comply with standard alcohol terms.

2 c. The facts that led to the conviction are that on or about the early morning
3 of July 18, 2009, a patrol officer with the Escondido Police Department observed a vehicle
4 (driven by Respondent), make a turn onto a one-way street traveling in the wrong direction (and
5 headed towards the officer). After two attempts to get Respondent's attention, during which the
6 officer had to back up his vehicle to stop her, Respondent stopped. The officer immediately
7 noticed that Respondent had bloodshot and watery eyes, and slurred speech. The officer had
8 Respondent exit her vehicle. He noticed that she had an unsteady gait and the odor of an
9 alcoholic beverage about her person. Respondent submitted to a series of field sobriety tests and
10 gave two preliminary alcohol screening (PAS) tests resulting in scores of .105% and .103%.
11 Based on Respondent's objective symptoms of intoxication, the officer arrested Respondent. In a
12 search of Respondent's vehicle, the officer found an empty mini bottle of vodka, a sports drink
13 bottle with an orange liquid that had an alcoholic odor, two empty bottles labeled "Screwdriver,"
14 and a small zipper bag containing three envelopes of medications, including phentermine, a
15 Schedule IV controlled substance as designated by Health and Safety Code section 11057,
16 subdivision (f)(4), and Norco, a brand name for hydrocodone with acetaminophen, a Schedule II
17 controlled substance as designated by Health and Safety Code section 11055, subdivision
18 (b)(1)(J). Respondent was booked at the Escondido Police Department and submitted to a blood
19 chemical test.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)**

22 15. Respondent has subjected her vocational nurse license to disciplinary action
23 under section 2878.5, subdivision (b) of the Code in that on or about July 18, 2009, Respondent
24 used alcohol in a manner dangerous or injurious to herself and others, in that she operated a motor
25 vehicle on a public roadway with blood alcohol concentration (BAC) of .10%, as described in
26 paragraph 14, above.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Criminal Conviction Involving the Consumption of Alcohol)**

3 16. Respondent has subjected her vocational nurse license to disciplinary action under
4 section 2878.5, subdivision (c) of the Code in that on or about November 20, 2009, Respondent
5 was convicted of violating the law against drinking alcohol and driving, as described in paragraph
6 14, above.

7 **DISCIPLINARY CONSIDERATION**

8 17. To determine the degree of discipline, if any, to be imposed on Respondent,
9 Complainant alleges:

10 a. On or about June 23, 2004, in an administrative proceeding entitled *In the*
11 *Matter of Dorothy Straba*, before the Board of Nursing for the State of New Mexico (BON),
12 Respondent's nursing license was placed on probation for one (1) year after she violated the
13 terms of her Diversion Program. The circumstances were that on or about March 27, 2001,
14 Respondent requested admission into the Diversion Program subsequent to a complaint alleging
15 diversion of Robaxin from the workplace. When contacted, she denied being chemically
16 dependent. A second complaint was received by the BON alleging abuse of prescription
17 medications and alcohol. Respondent submitted a second letter requesting admission to the
18 Diversion Program on October 3, 2001. Respondent signed her initial contract with the diversion
19 Program on November 11, 2001 agreeing to abstinence. On August 6, 2002, the Diversion
20 Program received a drug screen that was positive for amphetamines. At a formal hearing on
21 December 11, 2002, the BON placed Respondent's nursing license on probation for one (1) year.
22 On January 7, 2004, Respondent admitted that she had consumed a six-pack of beer on December
23 26, 2003, violating the terms of her diversion contract. As a result, Respondent's nursing license
24 was again placed on one (1) year probation on June 23, 2004.

25 b. In a letter to Respondent dated September 24, 2007, an Enforcement Analyst of
26 the Board advised Respondent that the Board had completed a review of the disciplinary action
27 taken against Respondent's New Mexico nursing license related to her application for licensure in
28 the State of California. Respondent was informed that the discipline was substantially related to

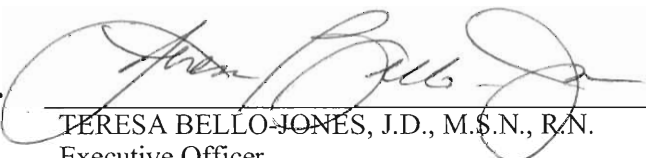
1 the vocational nurse license, but that the Board would not pursue a denial of Respondent's
2 application. Respondent was warned that future substantiated reports of similar behavior, or other
3 violations of the law or violations of regulations governing the practice of a vocational nurse
4 could result in disciplinary action against Respondent's license.

5 **PRAYER**

6 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
7 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
8 issue a decision:

- 9 1. Revoking or suspending Vocational Nurse License Number VN 233369, issued to
10 Dorothy B. Straba;
11 2. Ordering Dorothy B. Straba to pay the Board of Vocational Nursing and Psychiatric
12 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to
13 Business and Professions Code section 125.3;
14 3. Taking such other and further action as deemed necessary and proper.

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16 DATED: November 23, 2010.


TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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